

**UNITED STATES OF AMERICA
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

CHAIRMAN:
Judge Wm. Terrell Hodges
United States District Court
Middle District of Florida

MEMBERS:
Judge D. Lowell Jensen
United States District Court
Northern District of California

Judge J. Frederick Motz
United States District Court
District of Maryland

Judge Robert L. Miller, Jr.
United States District Court
Northern District of Indiana

Judge Kathryn H. Vratil
United States District Court
District of Kansas

Judge David R. Hansen
United States Court of Appeals
Eighth Circuit

Judge Anthony J. Scirica
United States Court of Appeals
Third Circuit

DIRECT REPLY TO:

Jeffery N. Lüthi
Clerk of the Panel
One Columbus Circle, NE
Thurgood Marshall Federal
Judiciary Building
Room G-255, North Lobby
Washington, D.C. 20002

Telephone: [202] 502-2800
Fax: [202] 502-2888

<http://www.jpml.uscourts.gov>

October 18, 2006

Robert C. Heinemann, Clerk
United States Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Re: MDL-1596 -- In re Zyprexa Products Liability Litigation

(See Attached Schedule A of Order)

Dear Mr. Heinemann:

I am enclosing a certified copy and one additional copy of a transfer order filed today by the Panel in the above-captioned matter. The order is directed to you for filing.

The Panel's governing statute, 28 U.S.C. §1407, requires that the transferee clerk "...transmit a certified copy of the Panel's order to transfer to the clerk of the district court from which the action is being transferred."

A list of involved counsel is attached.

Very truly,

Jeffery N. Lüthi
Clerk of the Panel

By: 
Mecca S. Carter
Deputy Clerk

Enclosures/Attachment

cc: Transferee Judge: Judge Jack B. Weinstein
Transferor Judges: (See Attached List of Judges)
Transferor Clerks: (See Attached List of Clerks)

INVOLVED COUNSEL LIST
DOCKET NO. 1596
IN RE ZYPREXA PRODUCTS LIABILITY LITIGATION

Samuel J. Abate, Jr.
McCarter & English, L.L.P.
245 Park Avenue
27th Floor
New York, NY 10167

John F. Brenner
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
P.O. Box 652
Newark, NJ 07101-0652

Thomas F. Campion, Jr.
Drinker, Biddle & Reath, L.L.P.
500 Campus Drive
Florham Park, NJ 07932-1047

Rodney R. Cate
Hand Arendall, LLC
P.O. Box 123
Mobile, AL 36601

Andrew B. Cooke
Flaherty, Sensabaugh & Bonasso
P.O. Box 3843
Charleston, WV 25338

J. Aaron Cooke
Cooke Law Firm
331 Columbia Street
P.O. Box 188
Lafayette, IN 47902-0188

Jody L. DeFord
Ice Miller, LLP
One American Square
Suite 3100
Indianapolis, IN 46282-0200

Raymond S. Franks, II
Goodwin & Goodwin
P.O. Box 2107
Charleston, WV 25328-2107

Dominic Frinzi
Dominic H. Frinzi Law Office
2825 N. Colonial Drive
Milwaukee, WI 53222-4532

Troy N. Giatras
Giatras & Webb
118 Capitol Street
Suite 400
Charleston, WV 25301

Nina M. Gussack
Pepper Hamilton, LLP
3000 Two Logan Square
18th & Arch Street
Philadelphia, PA 19103-2799

Frances A. Hughes
Office of the Attorney General
State Capitol Complex
Building 1, Room 26-E
Charleston, WV 25305

Michael P. Malone
Hinshaw & Culbertson, LLP
100 E. Wisconsin Avenue
Suite 2600
Milwaukee, WI 53202-4115

Christiaan A. Marcum
Richardson, Patrick, Westbrook &
Brickman
1037 Chuck Dawley Blvd.
Building A
P.O. Box 1007
Mt. Pleasant, SC 29465

Alan Daniel Mathis
Johnston, Barton, Proctor & Powell,
LLP
AmSouth/Harbert Plaza
1901 6th Avenue North
Suite 2900
Birmingham, AL 35203-2618

David P. Matthews
Abraham, Watkins, Nichols, Sorrels,
Matthews & Friend
800 Commerce Street
Houston, TX 77002-1776

Adam B. Michaels
Pepper Hamilton, LLP
2 Logan Square
Suite 3000
Philadelphia, PA 19103-2799

Kenneth A. Murphy
Drinker, Biddle & Reath, L.L.P.
One Logan Square
18th & Cherry Street
Philadelphia, PA 19103-6996

Douglas M. Poland
Godfrey & Kahn
780 N. Water St.
Milwaukee, WI 53202-3590

Eric N. Roberson
Law Office of Patrick J. Mulligan, P.C.
2911 Turtle Creek Boulevard
Suite 900
Dallas, TX 75219

Cindy D. Salvo
Entwistle & Cappucci, LLP
30 Columbia Turnpike
Florham Park, NJ 07932

Christopher A. Seeger
Seeger Weiss, LLP
550 Broad Street
Suite 920
Newark, NJ 07102-4573

Joseph L. Tucker
Jackson & Tucker, P.C.
Black Diamond Building
2229 First Avenue North
Birmingham, AL 35203-4203

Anthony Vale
Pepper Hamilton, LLP
3000 Two Logan Square
18th & Arch Street
Philadelphia, PA 19103-2799

E. Frank Woodson
Beasley, Allen, Crow, Methvin, Portis &
Miles, PC
218 Commerce Street
P.O. Box 4160
Montgomery, AL 36103-4160

INVOLVED JUDGES LIST
DOCKET NO. 1596
IN RE ZYPREXA PRODUCTS LIABILITY LITIGATION

Hon. W. Harold Albritton, III
Senior U.S. District Judge
P.O. Box 629
Montgomery, AL 36101-0629

Hon. Garrett E. Brown, Jr.
Chief Judge, U.S. District Court
4050 Clarkson S. Fisher Federal Building & U.S. Courthouse
402 East State Street
Trenton, NJ 08608-1507

Hon. Robert C. Chambers
U.S. District Judge
P.O. Box 1570
Huntington, WV 25716-1570

Hon. Charles N. Clevert, Jr.
U.S. District Judge
208 U.S. Courthouse & Federal Building
517 East Wisconsin Avenue
Milwaukee, WI 53202

Hon. Kristi K. DuBose
U.S. District Judge
101 John A. Campbell U.S. Courthouse
113 St. Joseph Street
Mobile, AL 36602-3606

Hon. Allen Sharp
Chief Judge, U.S. District Court
124 Robert A. Grant Federal Building & U.S. Courthouse
204 South Main Street
South Bend, IN 46601

Hon. Myron H. Thompson
U.S. District Judge
P.O. Box 235
Montgomery, AL 36101-0235

Hon. Jack B. Weinstein
Senior U.S. District Judge
1420 U. S. Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

INVOLVED CLERKS LIST
DOCKET NO. 1596
IN RE ZYPREXA PRODUCTS LIABILITY LITIGATION

Charles R. Diard, Jr., Clerk
123 John A. Campbell U.S. Courthouse
113 St. Joseph Street
Mobile, AL 36602-3621

Debra P. Hackett, Clerk
U.S. District Court
P.O. Box 711
Montgomery, AL 36101-0711

Sofron B. Nedilsky, Clerk
362 U.S. Courthouse & Federal Building
517 East Wisconsin Avenue
Milwaukee, WI 53202

Stephen R. Ludwig, Clerk
P.O. Box 1498
Lafayette, IN 47902

Teresa Deppner, Clerk
U.S. District Court
P.O. Box 1570
Huntington, WV 25716-1570

William T. Walsh, Clerk
2020 Clarkson S. Fisher Federal Building & U.S. Courthouse
402 East State Street
Trenton, NJ 08608

A CERTIFIED TRUE COPYJUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

OCT 18 2006

FILED
CLERK'S OFFICE.**DOCKET NO. 1596**OCT 18 2006
ATTEST *[Signature]*
FOR THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**JUDICIAL PANEL ON MULTIDISTRICT LITIGATION****IN RE ZYPREXA PRODUCTS LIABILITY LITIGATION****BEFORE WM. TERRELL HODGES, CHAIRMAN, D. LOWELL JENSEN, J.
FREDERICK MOTZ, ROBERT L. MILLER, JR., KATHRYN H. VRATIL,
DAVID R. HANSEN AND ANTHONY J. SCIRICA, JUDGES OF THE PANEL****TRANSFER ORDER**

Before the Panel are motions brought, respectively, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in 39 Northern District of Indiana actions, six Middle District of Alabama actions, one Southern District of Alabama action, one District of New Jersey action, and one Southern District of West Virginia action as listed on Schedule A. These plaintiffs ask the Panel to vacate its orders conditionally transferring the actions to the Eastern District of New York for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket. Similarly, two defendants – a doctor and a health care organization – in the Eastern District of Wisconsin action move to vacate the conditional transfer order with respect to that action. Common defendant Eli Lilly and Co. opposes the motions to vacate and urges inclusion of the 49 actions in the MDL-1596 proceedings.

On the basis of the papers filed and hearing session held (without oral argument), the Panel finds that these 49 actions involve common questions of fact with the actions in this litigation previously transferred to the Eastern District of New York, and that transfer of these actions to the Eastern District of New York for inclusion in the coordinated or consolidated pretrial proceedings in that district will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The Panel further finds that transfer of these actions is appropriate for reasons expressed by the Panel in its original order directing centralization in this docket. In that order, the Panel held that the Eastern District of New York was a proper Section 1407 forum for actions involving claims of liability related to the prescription drug Zyprexa. *See In re Zyprexa Products Liability Litigation*, 314 F.Supp.2d 1380 (J.P.M.L. 2004). Any motions for remand to state court or for dismissal can be presented to and decided by the transferee court. *See, e.g., In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

Plaintiff in the Southern District of West Virginia action argues against transfer, among other things, that the action, which pleads statutory claims under West Virginia law on behalf of the state, does not share sufficient questions of fact with the products liability claims in the previously centralized MDL-1596 actions, which arise from product defect and failure to warn, to warrant transfer. We are unpersuaded by this argument. Regardless of the differences in legal theory, the claims in the Southern District of West Virginia action similarly arise from representations about the safety of Zyprexa and its

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adverse effects, in particular, the incidence of diabetes and related diseases in users. Inclusion of these claims in the MDL-1596 proceedings has the salutary effect of placing all related claims in this docket before a single judge who can formulate a pretrial program that: 1) prevents repetition of previously considered matters; and 2) allows pretrial proceedings with respect to any individual issues to proceed concurrently with pretrial proceedings on common issues. *See, e.g., In re Ephedra Products Liability Litigation*, 314 F.Supp.2d 1373, 1375 (J.P.M.L. 2004). It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. Whenever the transferee judge deems remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See* Rule 7.6, R.P.J.P.M.L., 199 F.R.D. at 436-38.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of New York and, with the consent of that court, assigned to the Honorable Jack B. Weinstein for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

IT IS FURTHER ORDERED that the request for fees and expenses by certain plaintiffs is denied.

FOR THE PANEL:



Wm. Terrell Hodges
Chairman

SCHEDULE A

MDL-1596 -- In re Zyprexa Products Liability Litigation

Middle District of Alabama

Mattie Grant v. Eli Lilly & Co., et al., C.A. No. 2:06-464
Marie Person v. Eli Lilly & Co., et al., C.A. No. 2:06-465
Nicole Glover v. Eli Lilly & Co., et al., C.A. No. 2:06-466
Robert Frizzle v. Eli Lilly & Co., et al., C.A. No. 2:06-467
Leslie Gantt v. Eli Lilly & Co., et al., C.A. No. 2:06-468
Dorothy Wakefield v. Eli Lilly & Co., et al., C.A. No. 3:06-460

Southern District of Alabama

Kelly P. Foster v. Eli Lilly & Co., et al., C.A. No. 1:06-261

Northern District of Indiana

Edwin Perkins, Jr., et al. v. Eli Lilly & Co., C.A. No. 4:06-46
Fredrick Thomas, et al. v. Eli Lilly & Co., C.A. No. 4:06-48
Ozella Tabourne, et al. v. Eli Lilly & Co., C.A. No. 4:06-49
Lisa Alex, et al. v. Eli Lilly & Co., C.A. No. 4:06-50
Maria Parson, et al. v. Eli Lilly & Co., C.A. No. 4:06-51
Angela Williams, et al. v. Eli Lilly & Co., C.A. No. 4:06-54
Victor Johnson, et al. v. Eli Lilly & Co., C.A. No. 4:06-55
Jack Lidikay, et al. v. Eli Lilly & Co., C.A. No. 4:06-56
Donette Mace, et al. v. Eli Lilly & Co., C.A. No. 4:06-57
John Murnane, et al. v. Eli Lilly & Co., C.A. No. 4:06-58
Marie Haney, et al. v. Eli Lilly & Co., C.A. No. 4:06-59
Bradford Heck, et al. v. Eli Lilly & Co., C.A. No. 4:06-60
Charmane Horton, et al. v. Eli Lilly & Co., C.A. No. 4:06-61
Wesley Howard, et al. v. Eli Lilly & Co., C.A. No. 4:06-62
Bobby Brown, et al. v. Eli Lilly & Co., C.A. No. 4:06-63
Charles Clanton, et al. v. Eli Lilly & Co., C.A. No. 4:06-64
Nancy Carpenter, et al. v. Eli Lilly & Co., C.A. No. 4:06-65
Maxine Fernandez, et al. v. Eli Lilly & Co., C.A. No. 4:06-66
Luella Cramer, et al. v. Eli Lilly & Co., C.A. No. 4:06-67
Gordon Smith, et al. v. Eli Lilly & Co., C.A. No. 4:06-68
Ray Garrison, et al. v. Eli Lilly & Co., C.A. No. 4:06-69
Willie Bracy, et al. v. Eli Lilly & Co., C.A. No. 4:06-70
Zanara R. Ross, et al. v. Eli Lilly & Co., C.A. No. 4:06-71
Roger Tompkins, et al. v. Eli Lilly & Co., C.A. No. 4:06-75

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Northern District of Indiana (Continued)

Wayne Trembly, et al. v. Eli Lilly & Co., C.A. No. 4:06-76
Angela Albert, et al. v. Eli Lilly & Co., C.A. No. 4:06-77
Richard Pagani, et al. v. Eli Lilly & Co., C.A. No. 4:06-78
Leslie Carter, et al. v. Eli Lilly & Co., C.A. No. 4:06-79
Casey Cade, et al. v. Eli Lilly & Co., C.A. No. 4:06-80
Denise Eggleston, et al. v. Eli Lilly & Co., C.A. No. 4:06-81
Kathleen Cleary, et al. v. Eli Lilly & Co., C.A. No. 4:06-82
David Aguilera, et al. v. Eli Lilly & Co., C.A. No. 4:06-83
Roseaner Gresham, et al. v. Eli Lilly & Co., C.A. No. 4:06-84
Roger Young, et al. v. Eli Lilly & Co., C.A. No. 4:06-85
Patsy Wright, et al. v. Woods, et al., C.A. No. 4:06-86
Ronald Brassfield, et al. v. Eli Lilly & Co., C.A. No. 4:06-87
Michael Capshaw, et al. v. Eli Lilly & Co., C.A. No. 4:06-88
Amy Goode, et al. v. Eli Lilly & Co., C.A. No. 4:06-90
Lois Anne Shaffer, et al. v. Eli Lilly & Co., C.A. No. 4:06-91

District of New Jersey

Kevin A. Holbert, et al. v. Eli Lilly & Co., et al., C.A. No. 3:06-1742

Southern District of West Virginia

State of West Virginia, ex rel v. Eli Lilly & Co., C.A. No. 3:06-298

Eastern District of Wisconsin

Frances Lee Young v. Eli Lilly & Co., et al., C.A. No. 2:06-645